APPEAL NO. 042508
FILED NOVEMBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 19, 2004. With regard to the disputed issues the hearing officer determined that (temporary agency) was the respondent's (claimant) employer for purposes of the 1989 Act at the time of the claimant's injury on _____, and that the appellant (carrier) provided workers' compensation coverage for (GC) on _____.

The carrier appeals, contending that the temporary agency had terminated its agreement with GC retroactive to July 14, 2003, and that therefore the claimant was not covered by the temporary agency's workers' compensation insurance with the carrier on _____. The claimant responds, urging affirmance.

DECISION

Affirmed.

The facts are not much in dispute. The temporary agency and GC had entered into a service agreement (agreement) whereby GC would recruit and sign up employees with the temporary agency as temporary agency employees and the temporary agency would provide payroll, taxes and insurance including workers' compensation insurance. In exchange, GC was to make weekly payments to the temporary agency. The agreement contained the following key provisions:

> All NSF's [insufficient funds checks] must be paid within 24 hours of being notified via a certified check for the NSF amount [including certain penalties] . . . . Failure to resolve any NSF's within 24 hours of notification will result in immediate termination of this agreement and immediate cancellation of all insurance coverages . . . .

An addendum signed by GC also states:

> Failure to resolve any NSF within 24 hours will result in immediate termination of services and immediate cancellation of all insurance coverages.

The claimant was hired through this process in early July 2003, and it is undisputed that the claimant at one time was an employee of the temporary agency under the arrangement between the temporary agency and GC.

On July 23, 2003, the temporary agency sent GC an invoice requesting payment. GC issued a check dated July 24, 2003, as payment for the invoice amount. Although there is some conflicting evidence when the temporary agency realized the July 24,

2003, had "bounced" notations on the check indicated it was being returned for insufficient funds on July 30, 2003, together with a "Notice of Returned Deposited Items" dated August 1, 2003. In the meantime it is undisputed that on _____, the claimant had sustained catastrophic injuries. The temporary agency subsequently sent GC a letter dated August 5, 2003, terminating the agreement "effective July 14, 2003, at 12:01 am" (which was the beginning of the pay period for which the invoice was issued). The carrier contends that on July 25, 2003, the temporary agency "immediately terminated the agreement with [GC] retroactive to July 14, 2004," and therefore, the claimant was not covered by the temporary agency workers' compensation insurance coverage because the agreement had been terminated prior to the date of claimant's injuries.

The carrier contends that the claimant was never notified that his workers' compensation insurance had been cancelled (and we note neither was there any evidence that the Texas Workers' Compensation Commission (Commission) had been notified of any insurance coverage cancellation) and that even after the accident on _____, temporary agency accident and report forms were used to report the accident. The claimant also contends that the agreement does not permit (provide for) "retroactive termination." We agree. The agreement provides that NSF check "must be paid" or "resolved within 24 hours of being notified" or "of notification." Although the addendum does not have the notification provision it does speak to a "failure to resolve any NSF within 24 hours." While the carrier argues that the NSF was effective on July 25, 2003, the earliest either the temporary agency or GC would have had notice was July 30, 2004, per the notice on the check. There is no evidence that GC was given notice to "resolve any NSF" and the temporary agency terminated the agreement by letter dated August 5, 2003. Nor do we find any provision in either the agreement or the addendum which allows termination retroactively to the beginning of the pay period.

The hearing officer also commented that "there is no evidence that [the temporary agency] as the Employer or the Carrier complied with the cancellation provisions as set out in . . . Section[s] 406.007 and 406.008." Section 406.007 provides in pertinent part;

> (a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the commission by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 406.005.
>
> (b) The notice required under this section shall be filed with the Commission in accordance with Section 406.009.
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> (c) Termination of coverage takes effect on the later of:

(1) the 30th day after the date of filing of notice with the Commission under Subsection (a); or

(2) the cancellation date of the policy.

(d) The coverage shall be extended until the date on which the termination of coverage takes effect, and the employer is obligated for premiums due for that period.

Section 406.008 provides in pertinent part:

(a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal by certified mail or in person to the employer and the commission not later than:

(1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or

(2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance. . . .

(b) The notice required under this section shall be filed with the Commission.

(c) Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the Commission.

The claimant at the CCH alluded to "Rule 43.10." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 110.1 (Rule 110.1) provides the requirements for notifying the Commission of insurance coverage and implements Sections 406.007 and 406.008. The carrier, neither at the CCH or on appeal addressed these provisions. We hold that neither the carrier nor the temporary agency complied with the provisions of Sections 406.007 and 406.008 and that Sections 406.007(d) and 406.008(c) extends the coverage as provided for in those sections.

We have reviewed the complained of determinations and conclude that the hearing officer did not err in his application of law and that his determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order

The true corporate name of the insurance carrier is **DALLAS FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSTIN POLK
14160 DALLAS PARKWAY, SUITE 500
DALLAS, TEXAS 75254.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge